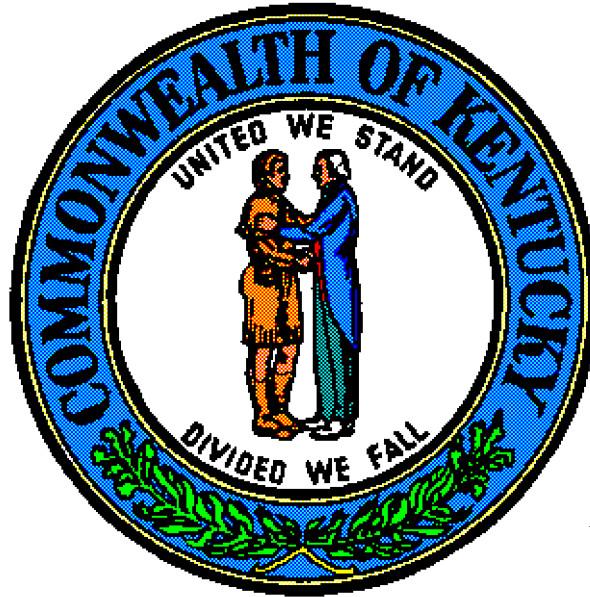


# Kentucky Department of Workers Claims



## Law Summary 1996 Workers Compensation Reform Act House Bill 1 (Effective 12/12/96)

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Addendum

Kentucky Department Workers Claims  
Law Summary  
1996 Workers Compensation Reform Act  
(Effective 12/12/96)

1. Effective Date of House Bill 1 (New Section 82):

- "The substantive provisions of this Act shall apply to any claim arising from an injury or last exposure to the hazards of an occupational disease occurring on or after the effective date (12/12/96) of this ACT. Procedural provisions of this Act shall apply to all claims irrespective of the date of injury or last exposure, including, but not exclusively, the mechanisms by which claims are decided and workers are referred for medical evaluations. The provisions of KRS 342.120(3), 342.125(8), 342.213(2)(e), 342.265, 342.270(7), 342.320, 342.610(3), 342.760(4) and 342.990(11) are remedial."

2. Definition of Injury (KRS 342.0011(1)):

- Injury is a traumatic work related event or series of events, (including cumulative trauma), which is the "proximate cause" of a harmful change in the human organism evidenced by "objective medical findings" (342.0011(33)). Specifically excluded are effects of the "natural aging process".

3. Definition of Various Categories of Disability (KRS 342.0011(11)):

- Three types of disability benefits may be payable after a disabling work-place injury.

A. Temporary Total Disability (TTD) is payable when:

- employee has not reached maximum medical improvement and hasn't reached level of improvement which would permit a return to employment.

B. Permanent Partial Disability (PPD) is payable when:

- employee has a permanent disability rating but retains the ability to "work" (KRS 342.0011(34)).

C. Permanent Total Disability (PTD) is payable when:

-Employee has a permanent disability rating (KRS 342.0011(36)) and has "a complete and permanent inability to perform any type of work". Irrebuttable presumption of PTD exists for: (1) Total and permanent loss of sight in both eyes ; (2) loss of both feet at or above the ankle; (3) loss of both hands at or above the wrist; (4) loss of one foot at or above the ankle and the loss of one hand at or above the wrist; (5) permanent and complete paralysis of both arms, both legs, or one arm and one leg; (6) incurable insanity or imbecility; and (7) total loss of hearing.

4. Other Important Definitions:

A. objective medical finding-means information gained by a physician through direct observation and testing of the patient applying objective or standardized methods.

B. "work-means providing services to another in return for remuneration on a regular and sustained basis in a competitive economy."

C. "permanent impairment rating-means percentage of whole body impairment caused by the injury or occupational disease as determined by 'Guides to the Evaluation of Permanent Impairment,' American Medical Association, latest available edition."

D. "permanent disability rating-means the permanent impairment rating selected by an arbitrator or ALJ times the factor set forth in the table that appears at KRS 342.730(1)(b))."

5. Procedure for Resolution of Claims/Medical Evaluation - University Medical Schools:

-KRS 342.270 provides that an application for resolution of claim must contain all causes of action of which an employee has, or should have knowledge. Failure to join known cause of action will bar a later claim. The Commissioner will notify all parties and assign the claim to an arbitrator for benefit review. Within 45 days of the Commissioner's notice, the employer/carrier must file a notice of denial or acceptance of the claim, describing the specific matters which are admitted or denied, and the basis for any denial.

-The arbitrator shall conduct any proceedings "necessary to the resolution of the claim," including ordering the parties to appear for a benefit review conference or submit medical reports or other information. The arbitrator may also direct the employee to an evaluating physician from the University of Kentucky or University of Louisville medical schools (KRS 342.315), and the ensuing report will be given "presumptive weight" by arbitrators and ALJ's. When an

arbitrator or ALJ rejects the medical school opinion, they must specifically state the reasons therefor. Cost of the evaluation and travel expenses of the employee shall be paid by the employer, subject to reimbursement by the Special Fund if the worker is later determined not to be an employee.

-In CWP claims, the new ACT requires that only one (1) medical report be filed with the application and mandates that the Commissioner promptly refer the employee for an evaluation.

-Arbitrators shall issue written determinations addressing all contested issues in each claim within 90 days following assignment.

-If an arbitrator determines that a pending claim presents factual issues best resolved through hearing before an ALJ, the arbitrator may enter an order transferring the claim to an ALJ for further proceedings.

- Any party may appeal an arbitrator's written determination within 30 days and request a hearing before an ALJ (KRS 342.275). The Commissioner will then issue a notice of assignment to an ALJ, the proof taking schedule, and the time and place of the formal hearing. Administrative law judge proceedings are de novo. An ALJ "may confer informally with the parties for the purpose of defining and narrowing the issues, discussing settlements, and considering other relevant matters that may aid in the disposition of the case."

-Under KRS 342.281, the legislature deleted the HB 928 (1994) provision that failure to file a petition for reconsideration does not preclude appeal on an issue. This restores the pre-1994 requirements of Eaton Axle Corp v. Nally, KY, 688 SW2d 334 (1985).

-Appeals from ALJ opinions are, as under prior law, to the Workers' Compensation Board and thence to the Court system. The Board is, however, abolished as of 7-1-2000, appeals will then go directly to the Court of Appeals.

#### 6. Division of Ombudsman and Workers' Compensation Specialist Services (KRS 342.329):

-Workers' Compensation Specialist positions created. Duties include assisting workers in obtaining medical reports, job descriptions and other materials pertinent to a claim for benefits and preparing all documents necessary for a claim application (KRS 342.329 (1)(d)).

7. Determination of Disability Income Benefits for Injuries and KRS 342.316 Occupational Disease Claims: (For injuries occurring or last date of exposure on or after 12/12/96)

-Disability is determined by the table set forth in KRS 342.730, which utilizes the AMA impairment rating times a multiplication factor. The product of these figures is referred to as the "permanent disability rating". Osborne v. Johnson, KY, 432 SW2d 800 (1968), factors are eliminated in determining permanent partial disability. Under 342.730(1)(c)(1), an employee who does not retain the "physical capacity" to return to the type of work performed at the time of injury is entitled to 1.5 times the benefit to which one would otherwise be entitled.

-Under KRS 342.730(1)(c)(2), when an employee returns to work at the same or greater average weekly wage (AWW) benefits are reduced by 1/2 for each week such work continues. If employment ceases for any reason, benefits will be restored to the regular benefit level during unemployment or work at lesser wages than earned at time of injury.

A. Determination of Permanent Partial Disability Benefits:

-Benefits for PPD are calculated, by multiplying 66 2/3% of the employees pre-injury AWW (not to exceed 75% of the state average weekly wage), times the permanent disability rating (AMA impairment times factor). The benefit may not exceed 99% of 66 2/3% of the employees AWW or 75% of the SAWW, whichever is lower. When an employee lacks the physical capacity to return to the type of work performed at the time of injury the maximum benefit may increase to 100% of the SAWW.

<u>AMA IMPAIRMENT</u>	<u>FACTOR</u>
0 - 5%	0.75
6 - 10%	1.00
11 - 15%	1.25
16% - 20%	1.50
21% - 25%	1.75
26% - 30%	2.00
31% - 35%	2.25
36 and above	2.50

-Benefit duration is unchanged. 425 weeks for 50% or less permanent disability rating and 520 weeks for greater than 50% permanent disability rating.

-For PPD, the following will not be considered in determining the extent and duration of disability benefits:

- a. "conditions previously compensated",
- b. Coal Workers Pneumoconiosis (CWP or "black lung") , and

c. hearing loss. (KRS 342.70(1)(c)).

-Offsets to PPD Benefits:

-All income benefits terminate on date on which the employee qualifies for normal old age Social Security retirement benefits, or after 2 years, whichever last occurs (KRS 342.730(4)).

-Offset for employer funded disability or sickness and accident plan covering same disability unless the plan contains an internal offset provision providing otherwise (KRS 342.730(6)).

B. Determination of Temporary and Permanent Total Disability Benefits:

-No change in calculation of the benefit due except:

-Offset for unemployment benefits (342.730(6)).

-Offset for employer funded disability or sickness and accident plan covering same disability unless the plan contains an internal offset provision providing otherwise (KRS 342.730(6)).

-Income benefits terminate on date on which employee qualifies for normal old age Social Security retirement benefits, or after 2 years, whichever last occurs (342.730(4)).

-If employee returns to work while receiving permanent total disability benefits, he must notify the employer, carrier and Special Fund (KRS 342.730(7)).

8. Determination of Income Benefits for Coal Workers Pneumoconiosis (CWP) (KRS 342.732): (For Date of Last Exposure on or after 12/12/96)

-Working miners may file claims but may not receive benefits while working .

-Benefits are not payable to employees who have no pulmonary impairment except when progressive massive fibrosis is present.

-Retraining incentive benefits will be paid at increased levels (66 2/3% of employees AWW not to exceed 75% of SAWW) for up to 104 weeks to those enrolled in a full time, vocational training program including 24 instructional hours per week; up to \$3000.00 cash payment for relocation for job in area of training. Unlike prior law, payments do not commence on the date of the employees last exposure but rather are triggered by full time participation in an



approved educational program. Period of RIB award begins to run 180 days after the award is entered. In addition to weekly benefits, the employer shall also pay directly to the institution conducting the educational program, tuition and material costs not to exceed five thousand dollars (\$5000.00).

-Income benefits for CWP with dates of last exposure on and after 12/12/96 are payable 50% by the Employer and 50% by the Kentucky CWP Fund.

#### Coal Workers Pneumoconiosis

ILO Category (X-Ray classification)	Pulmonary Function (FVC or FEV1)	Disability	Duration (weeks)
Category 1, 2 or 3	80% - 100%	0	0 weeks
1/1, 1/2	55% - 79%	RIB	104 maximum
1/1, 1/2	> 55%	50%	425 weeks
2/1, 2/2, 2/3	55% - 79%	50%	425 weeks
2/1, 2/2, 2/3	> 55%	75%	520 weeks
3/2, 3/3	55% - 79%	75%	520 weeks
3/2, 3/3	> 55%	100%	lifetime
Progressive massive fibrosis		100%	lifetime

-Benefits for Occupational Diseases other than CWP with date of last exposure after 12/12/96 are compensable only by the employer of last exposure with no contribution from prior employers or the Special Fund.

#### 9. Hearing Loss (New Section 38):

-No income benefits for loss equating to less than 8% whole body impairment under AMA Guides.

-Income benefits under KRS 342.370 for impairment over 8%.

-Rebuttable presumption of work-relatedness if audiogram or other tests reveal loss pattern compatible with that caused by noise exposure and employee demonstrates history of repetitive workplace noise.

#### 10. Settlement Agreements (KRS 342.265):

-Can be approved by arbitrator or ALJ.

-For agreements after 12/12/96, Special Fund has option of settling its liability on same terms as employer. Notice of Special Fund exercise of this option shall be made by letter from Special Fund Director within 10 days following receipt of agreement.

-After 3/31/97, no agreement for commuted lump sum payment of future income benefits over \$10.00 per week will be approved unless there is "reasonable assurance" that the employee will have an adequate source of income benefits during disability.

-For lump sum settlements approved after 12/12/96 and before 12/31/97, the discount rate used in calculation of the settlement amount is 6%. Discount rates for successive years to be fixed by Commissioner before January 1 of each year.

#### 11. Special Fund Liability (KRS 342.120):

-The Special Fund has no liability for injuries or occupational disease where the injury or last exposure occurs on or after December 12, 1996 (KRS 342.120(e)). It will continue to process payments for the life of existing awards and to participate in claims and reopenings for injuries and dates of exposure prior to the effective date of the Act (12/12/96).

-When the Employee and Employer enter into a settlement agreement after 12/11/96, the Special Fund's period of payment commences on the date of approval of the agreement and extends over the maximum payment period remaining. (KRS 342.123(3)). This section is remedial and applies to all pending claims.

-Under KRS 342.265, in claims settled after 12/11/96, the Special Fund has the option of settling its liability on the same terms as those reached between the Employer and

Employee. The Employer and Employee must notify the Director of the Special Fund ten (10) days prior to approval of an agreement to allow the Special Fund an opportunity to exercise this option.

- Funded by an assessment rate of 9% for both coal and non-coal employers for 1997. Future premium assessments as necessary to eliminate unfunded liability by 2018 with contribution of \$19 million annually from coal severance tax revenues.

- Change in expense multiplier for self-insureds used in calculating "simulated premium" for special fund assessment purposes from 1.12 to 1.25 (KRS 342.0011 (28)(c)).

- Minimum special fund assessment for self-insureds based on minimum premium of thirty cents (.30) per one hundred dollars (\$100.00) of the employer's most recent annualized payroll for employees covered under chapter (KRS 342.0011 (28)(h)).

#### 12. Acceleration of Benefits during Retraining (KRS 342.710(7)):

- Employee enrolled in bona fide training program may elect to accelerate income benefits awarded under KRS 342.730 and receive up to 66 2/3% of AWW, not to exceed 100% of SAWW. Upon completion of retraining program, total of accelerated benefits will be deducted on a dollar-for-dollar basis, without discount, from remaining weekly benefits.

- If an employee terminates participation in the retraining program all sums accelerated will be discounted and deducted on a dollar-for-dollar basis from remaining weekly benefits.

#### 13. Death Benefits (KRS 342.750 and 342.730(4)):

- If death of employee occurs within 4 years from date of injury as a direct result of the injury, \$25,000.00 lump sum payment to estate, from which burial expenses are to be paid. (KRS 342.750)

- Surviving spouse and dependents' benefits terminate when they qualify for Social Security survivor benefits by reason of the fact that the employee would have qualified for normal old age social security retirement benefits (KRS 342.730(4)).

#### 14. Reopenings (KRS 342.125):

-Except for reopenings for medical issues, fraud, employee returning to work under KRS 342.730 (1)(c)(2), or employee holding total award returning to work; a motion to reopen must be made within 4 years of date of original award or order, and may not be made within two years of a prior motion to reopen or within 2 years of the original award or order. For CWP, an additional 2 years of employment with continuous injurious exposure is required prior to a motion to reopen.

-Grandfather clause: all old claims granted four (4) years from 12/12/96 to attempt reopening.

-Grounds for reopening:

- A. Fraud,
- B. Newly discovered evidence,
- C. Mistake, or
- D. Change of disability as shown by objective medical evidence of worsening or improvement of impairment due to a condition caused by the injury.

-Procedure:

All claims reopened after 12/12/96 will be subject to new benefit determination procedures including assignment to an arbitrator. As before, any increase in benefits is payable from the date of filing the motion to reopen for the remainder of the compensable period.

#### 15. Attorney Fees (KRS 342.320):

-Attorney Client Employment Contracts signed prior to 12/12/96 for injury or date of last exposure prior to 12/12/96 are governed by "old" law.

-For injuries or date of last exposure after 12/12/96, "new" law applies.

a. Maximum fee for plaintiff counsel is 20% of award up to \$2000.00 for services up to and including date of arbitrator's written determination.

b. Upon appeal by an employee from an arbitrator's written determination, the plaintiff's attorney fee will be fixed by the ALJ upon consideration of the "extent, quality and complexity" of services in an amount not to exceed 20% of the first \$25,000.00, 10% of the next \$15,000.00, and 5% of the remainder of any additional benefits awarded by the ALJ, up to \$10,000.00. This fee is paid by the employee and is in addition to the fee, if any awarded before the arbitrator.

c. Upon unsuccessful appeal by an employer from an arbitrator's written determination or ALJ award, ALJ shall fix fee for plaintiff's counsel based upon the extent, quality and complexity of services rendered up to \$5000.00 per level of appeal. This fee is in

addition to the fees awarded in (a) and (b) above.

-Attorney fees for representing employers are subject to approval by an arbitrator or ALJ in the same manner as prescribed for plaintiff's counsel and are subject to the same maximum fees at each level, not to exceed the amount set by the attorney client contract. Defense attorney fees are not dependent upon results achieved (KRS 342.320(8)).

-Fees for legal services presenting a claim for reimbursement to the KY Coal Workers Pneumoconiosis Fund shall not exceed \$1000.00 (KRS 342.320(8)).

-Non-attorney representation of employees is not prohibited (KRS 342.320(9)).

16. Notice Posting and Proof of Coverage Prior to Issuance of Building Permit (KRS 342.610):

-Local building official must require proof of workers' compensation coverage from builder before issuing building permit. Exempt contractor must certify this fact to the building official. (KRS 342.610(5)).

-Employer must post notice containing certain information regarding workers' compensation benefits at location of principal office and where employees report for payroll and personnel matters. Form and content of notice to be set by regulation. (KRS 342.610(6)).

17. Intoxication:

-Voluntary intoxication through any substance as defined under KRS 501.010 bars workers compensation benefits. (KRS 342.650 (3)).

18. Fraud (KRS 342.335 and 304.47-040):

-Places all worker's compensation fraud investigations in the Department of Insurance.

19. New Kentucky Coal Workers Pneumoconiosis Fund (New Section 3):

-Employer defends all CWP claims for all exposures after 12/12/96, and then seeks participation administratively, from the KCWPF.

-KCWPF is liable for 50% of benefits for black lung awards. Benefits payable only to employees of employers engaged in the severance and processing of coal.

-Payments are contemporaneous with payments from employers

-Funded by 3% assessment on premiums on employers engaged in the severance and processing of coal and 2.5 cents per ton assessment on severed coal.

20. Creation of Guaranty Funds (New Section 23):

-Creation of three separate guaranty funds

- a. Individual self-insurance guaranty fund
- b. Group self-insurance guaranty fund
- c. Kentucky coal employers self-insurance fund

-Guaranty Funds created for the purposes of meeting the obligations of insolvent individually self-insured employers or self-insurance groups or associations incurred while members of a guaranty fund and after exhaustion of all security, including bonds, escrow deposits, insurance or reinsurance.

-Membership in guaranty fund is mandatory in order to maintain self-insurance certificate.

21. Unfair Claims Settlement Practices Act (New Section 80):

-If carrier or self-insured engages in unfair claims settlement practices under Chapter 342 or KRS 304.12-230, the Commissioner shall impose fines of \$1000.00 - \$5000.00 for each violation.

-For a pattern of violations, Commissioner may revoke certificate of self-insurance or request Commissioner of Insurance to revoke the certificate of an insurance carrier.

-Commissioner must "bench mark" carriers for timely reporting and commencement of payments.

## 22. Employee Leasing/Temporary Employees (New Section 36):

-Employee leasing corporation must register with Commissioner. Any lessor whose workers compensation insurance has been terminated in past 5 years in any jurisdiction due to finding that the leasing arrangement was utilized to avoid premiums, taxes, or assessments, cannot register.

-Lessee must secure workers' compensation policy for leased employees or contract with lessor to maintain worker's compensation insurance and keep copy of policy on file.

-Temporary help service is deemed employee of temporary employees and must secure workers' compensation insurance.

-"Premium Received" for policies covering leased employees means premiums calculated using the experience modification factor of each lessee as defined in this ACT for each leased employee for that portion of the payroll pertaining to the leased employee.

## 23. New Penalties Imposed and Current Penalties Increased (KRS 342.990):

-Fines for fraudulent acts under KRS 342.335(1) or (2) involving attempted gain of \$300.00 or less will be subject to the fines of \$1000.00 - \$5000.00 per occurrence, or twice the amount of gain received, whichever is greater. If the fraudulent act involves more than \$300.00, the maximum fine is \$5000.00 per individual or \$10,000.00 per corporation, or twice the amount of gain received, whichever is greater.

-Violations of employee leasing provisions are subject to civil fines of \$500.00 - \$5000.00 per violation. Knowing violation of the employee leasing provisions for purposes of depriving a carrier premium owed will subject the violator to criminal penalties (KRS 342.990(7) (h) and (9)(c)).

-Violation of the provisions relating to self-insureds shall constitute grounds for decertification, or \$500.00 - \$5000.00 fine, or both.

-Owners, partners, principals, or corporate officers who knowingly violate 342.990(7), (8) or (9) are jointly and severally liable for fines.

-Commissioner, arbitrators, ALJs or courts of jurisdiction can order restitution of any benefit secured by conduct prohibited by Chapter 342.

24. KEMI (KRS 342.803, 342.811, 342.817342.823 and 342.841):

-Clarifies KEMI as an insurer of last resort.

-Extends surplus requirement from 3 years to 7 years unless modified by the General Assembly.

-Requires KEMI to report to the Interim Joint Committee on Labor and Industry by October 31 of each year its progress in building a surplus.

-Provides assessment authority available to other mutual carriers if deficits liabilities exceed assets.

-Deems KEMI rates competitive.

-Requires KEMI to file rates with the insurance commissioner as other carriers are required to do.

-Authorizes KEMI to utilize "discounting" in accordance with NAIC standards.

25. Board Member, ALJ and Arbitrator Selection (KRS 342.213, 342.230):

-Workers' Compensation Nominating Commission reconstituted to provide that at least 3 members receive no earned income from "the workers' compensation program." The Governor shall submit a list of Commission members and their terms to the Senate on or before March 1, 1997.

-Workers' Compensation Nominating Commission will consult with the Commissioner, Chief ALJ, and a Board member regarding the performance of ALJ's and arbitrators and may recommend retention of any sitting ALJ or arbitrator, or present the Governor with the names of 3 qualified individuals for each position . Recommendations for retention will be made no later than 90 days prior to a term expiration, and the Governor has 30 days to accept or reject a recommendation for retention. If the recommendation for retention is rejected, the Commission will tender three (3) additional names to the Governor for that position. The Commission must tender lists for vacancies within 60 days following certification by the Commissioner of a vacancy which should be filled.



-The Commissioner shall monitor the workload of ALJ's and arbitrators and, whenever a vacancy occurs, certify to the Commission within 120 days prior to the expiration of ALJ or arbitrator terms, whether it is necessary to fill that vacancy. An ALJ may be assigned the duties of an arbitrator by the Commissioner as necessary.

-No more than eight (8) arbitrators are to be appointed. Each must have extensive knowledge in workers compensation law, but is not required to be an attorney, and will be paid the salary of a District Court Judge. Duties include conducting benefit review conferences, supervising presentation of evidence (including making rulings on competency, relevancy, and materiality), rendering orders and final decisions, and ruling on settlement agreements. One of the arbitrators is to be designated Chief Arbitrator and will have training and supervisory duties. Terms of four (4) arbitrators end December 31, 1997; four (4) end December 31, 1999. Thereafter, terms are four (4) years.

-The Chief ALJ or Chief Arbitrator may be replaced and reassigned by the Commissioner at any time.

-Workers Compensation Nominating Commission is required to submit names to the Governor to fill vacancies on the Workers' Compensation Board no later than sixty (60) days after a vacancy occurs.

## 26. Religious Order Exemption (KRS 342.650 (8)):

-Exemption from Workers Compensation Act for members of any religious group conscientiously opposed to acceptance of public or private death, retirement, disability, medical expense payments, including social security, and which group has for more than 10 years made provisions for its dependent members.

## 27. Repealed statutes:

-342.1201 Findings and declarations relating to special fund assessments.

-342.1202 Apportionment of award for income benefits for permanent disability based on pre-existing disease or pre-existing condition of the back or the heart -- Limit on special fund's liability for all other injury claims.

-342.121 Reference of medical questions in subsequent injury or occupational disease cases to physician --Report -- Fees and expenses -- Decision of ALJ.

-342.150 Lump-sum compensation -- When and how made.

-342.720 Burial expense.

28. Remedial Statutes:

-342.120(3) Acceleration of Special Fund Payment.

-342.125(8) Reopening - Grandfather Clause.

-342.213(2)(e) Workers Compensation Nominating Commission membership.

-342.265 Settlement Agreements/Lump Sum Prohibition.

-342.270(7) Promulgation of regulation for procedures for resolution of claim within 120 days from effective date of the Act.

-342.320 Attorney Fees

-342.610(3) Voluntary Intoxication

-342.760(4) Uninsured Employer reimbursement to UEF and Special Fund of benefits paid on their behalf.

-342.990(11) Grants authority to Commissioner, Arbitrator, Administrative Law Judge and Court of competent jurisdiction to order restitution of a benefit secured by conduct prohibited by Chapter 342.

Addendum:

Department of Insurance-Rate filings/Savings:

- A new section of Subtitle 13 of KRS Chapter 304 is created.
- Requires the workers compensation advisory organization (NCCI) to file manual loss cost filing reflecting reductions/savings resulting from this Act, within 60 days of December 12, 1996 (12/12/96).
- Compensation carriers are to file new rates reflecting savings on policies issued or renewed after May 1, 1997.
- Prohibits rate adjustments, up or down of 15% or more within a 12 month period without approval of the Insurance Commissioner.

-KRS 304.13 is amended.

-Requires, after May 1, 1997, each insurer to provide information to workers compensation policyholders on rating law, and of their rights to appeal rating disputes.

-Requires the Commissioner of Insurance to issue administrative regulations to establish guidelines for application of experience modification factors.

-New section of KRS Chapter 131 created.

-Requires employers to report name, address, and policy number of workers compensation policy annually with the Revenue Cabinet.

## Benefit Determination Under House Bill 1

### Examples

Examples set forth calculations of permanent partial disability under new KRS 342.730 (effective for all injuries and last exposures occurring on or after 12/12/96). Calculations use 1996 State Average Weekly Wage.

#### Example #1

##### Assumed Facts:

Injured worker has 10% functional impairment due to injury and an average weekly wage (AWW) of \$300.00. Employee has not returned to work:

$$\$300.00 \times 66 \frac{2}{3}\% = \$200.00$$

$$\$200.00 \times 10\% = \$20.00$$

$$\$20.00 \times 1.00 \text{ (factor)} = \$20.00 \text{ per week for 425 weeks.}$$

If employee has returned to work, making the same or greater wages, benefits reduced by 1/2 during the period of employment ie. \$10.00 per week.

If employee does not retain the "physical capacity" to return to the type of work performed at the time of the injury the benefit of \$20.00 is multiplied by 1.5 thereby entitling the employee to \$30.00 per week for 425 weeks.

$$\$20.00 \times 1.5 = \$30.00$$

#### Example #2

Assumed Facts:

Injured worker is a "maximum wage" earner  
(AWW > \$415.94) and has 25% functional impairment  
due to injury and is entitled to maximum PPD benefit level ie. 2/3rds  
of \$415.94 = \$311.96 (75% of State Average Weekly Wage).

Employee has not returned to work:

$$\$311.96 \times 25\% = \$77.99$$

$$\$77.99 \times 1.75 \text{ (factor)} = \$136.48 \text{ per week for 425 weeks.}$$

If employee returns to work, making the same or greater wages, benefits reduced by 1/2 during the period of employment ie. \$68.24 per week.

If employee does not retain the "physical capacity" to return to the type of work performed at the time of the injury the benefit of \$136.48 is multiplied by 1.5 thereby entitling the employee to \$204.72 per week for 425 weeks.

$$\$136.48 \times 1.5 = \$204.72$$

#### Example #3

Assumed facts:

Injured worker has 54% functional impairment due  
to injury and AWW entitling employee to maximum PPD benefits ie.  
\$311.96 per week (75% of State Average Weekly Wage)

$$\$311.96 \times .54\% = \$168.46$$

$$\$168.46 \times 2.50 = \$421.15 \text{ (Exceeds 99\% of SAWW)}$$

The employee would be entitled to 99% of 75% of SAWW:  $\$311.96 \times 99\% = \$308.84$  per week for 520 weeks.

If employee returns to work, making the same or greater wages, benefits reduced by 1/2 during the period of employment ie. \$154.42 per week.

If employee does not retain the "physical capacity" to return to the type of work performed at the time of the injury the benefit equals 100% of State Average Weekly

Wage or \$415.94 per week for 520 weeks.

\* Any injury resulting in a functional impairment of 40% or greater, when an employee is entitled to the maximum benefit rates for PPD, results in a payment of \$308.84 per week.

40% - 50% = \$308.84 per week for 425 weeks

51% - 99% = \$308.84 per week for 520 weeks

\* Any injury resulting in a functional impairment of 40% or greater, when an employee is entitled to the maximum rate, and does not retain the "physical capacity" to return to the type of work performed at the time of the injury, but is not totally disabled, results in a payment of \$415.94 per week.

40% - 50% = \$415.94 per week for 425 weeks

51% - 99% = \$415.94 per week for 520 weeks